

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DAVID JOHN GUNSCH,

CV. 10-280-ST

Petitioner,

ORDER

v.

UNITED STATES OF AMERICA,

Respondent.

STEWART, Magistrate Judge.

On February 4, 2010, petitioner filed a Petition in which he asked the District Court for the District of Montana to amend its Judgment in his criminal case, or re-sentence him to make him eligible for 192 days of credit for time previously served. On March 15, 2010, the District of Montana interpreted petitioner's Petition as a 28 U.S.C. § 2241 habeas corpus action challenging the Bureau of Prisons' ("BOP") computation of his sentence. As a result, the District of Montana transferred this case to the

District of Oregon based upon petitioner's incarceration at FCI-Sheridan.

On March 23, 2010, petitioner filed a document entitled "Reconsideration for a Amendment of Judgement or Resentencing" (docket #3). In this Motion for Reconsideration, petitioner makes it clear that he is "in no way asking the BOP to re-calculate my sentencing computation. The BOP has correctly calculated my sentence." He asks the sentencing court to adjust his sentence pursuant to the Sentencing Guidelines, a portion of which he attaches to his Motion for Reconsideration.

The District of Montana did not have the benefit of petitioner's Motion for Reconsideration at the time it made the decision to transfer this case to Oregon. Based upon petitioner's concession that the BOP has correctly calculated his sentence, and his assertion that his sentence, itself, needs to be adjusted under the Sentencing Guidelines, the court concludes that 28 U.S.C. § 2241 does not appear to be an appropriate remedy for petitioner. As a result, the Clerk of Court is directed to transfer this case back to the Helena Division of the District of Montana.

///

///

///

///

///

CONCLUSION

The Clerk of Court is directed to transfer this case to the Helena Division of the District of Montana.

IT IS SO ORDERED.

DATED this 29th day of March, 2010.

/s/ Janice M. Stewart
Janice M. Stewart
United States Magistrate Judge